

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

DEPARTMENT OF REVENUE OF)	
THE STATE OF MONTANA,)	
)	DOCKET NO.: PT-1999-9
Appellant,)	
)	
-vs-)	
)	
FREDERICK N. & JOAN T.)	FINDINGS OF FACT,
WOLF,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on January 19, 2000, in the City of Superior, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Department of Revenue (DOR), represented by Joyce Weaver, appraiser, presented testimony in support of the appeal. The taxpayers, Frederick and Joan Wolf, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post hearing submissions was established. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and

concludes as follows:

FACTUAL BACKGROUND

1. The property which is the subject of this appeal is described as follows:

Improvements located in Section 2, Township 19 North, Range 30 West, CR-2 Subdivision, County of Mineral, State of Montana. (Assessor number 9300).

2. For the 1999 tax year, the DOR appraised the subject property at a value of \$33,000 for the land and \$160,080 for the improvements.
3. The taxpayers appealed to the Mineral County Tax Appeal Board on September 20, 1999, stating:

Ruled as new construction. Should have be (sic) labeled 95% replacement construction.

4. The appeal form states no value indications. The issue before the county board was the application of the phase-in provisions of 15-7-111 (1), (2) and the administrative rules promulgated by the DOR.
5. In its December 7, 1999 decision, the county board approved the appeal, stating:

We the board, believe there should be a consideration of replacement value. Conditions beyond the control of the taxpayer penalize them when their property's replaced and now is taxed as new.

6. The Department of Revenue then appealed that decision to this Board on December 21, 1999, stating:

Although unclear, the Board's decision appears to order a reduction to the subject property's "Value Before Reappraisal" which is contrary to Montana Law and Administrative Rule.

7. The taxpayers' original residence was destroyed by fire in September of 1996.
8. The structure was removed from the tax rolls for tax year 1997.
9. The structure was rebuilt during 1997, appraised in 1998 and put back on the tax rolls in 1998.
10. The original foundation was considered usable and became a part of the new construction.
11. The DOR determined the market value of the improvements by means of the cost approach to value.

STATEMENT OF ISSUE

The taxpayers' original residence was destroyed by fire in 1996 and rebuilt in 1997. The new residence is a near duplicate, i.e. floor plan, of the original 1976 residence. The taxpayers contend that the DOR's administrative rules with respect to new construction should not apply in this case. If the property would not have burned, they would be living in the original structure. Through no fault of their own, fire destroyed the residence and was subsequently reproduced. The DOR re-appraised the residence as new construction. The taxpayers contend that this is replacement, not new construction, and the phase-in provisions in MCA, 15-7-111

should apply when recognizing the original 1976 structure market value as the "Value Before Re-appraisal" (VBR), not the arbitrary calculated value from the newly constructed residence.

The Mineral County Tax Appeal Board approved the taxpayers' appeal as indicated on the appeal form. The DOR appealed to this Board, based on the county board's lack of jurisdiction to issue the Order.

A second issue was raised as to the accuracy of the physical characteristics of the subject structure.

DOR'S CONTENTIONS

The original log house was built in 1976 and destroyed by fire in 1996 with the exception of the foundation/footings. The DOR considered the home to be a total loss, subsequently removing it from the tax rolls for tax year 1997. In 1997 the taxpayers rebuilt the home, and in 1998 the DOR placed the property back on the tax rolls as new construction pursuant to 15-7-111 (2) MCA. In pertinent part the statute states: *The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.*

The DOR contends that the Administrative Rules of Montana (A.R.M.) with respect to new construction are straightforward and

dictate to the DOR how new construction should be treated.

ARM 42.20.501, DEFINITIONS ASSOCIATED WITH VALUATION PHASE-IN. (9)

“Neighborhood (NBHD) group percentage” means the percent of change in value from the total 1996 tax year value to the total 1997 reappraisal value, excluding properties with new construction, for those homogenous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

$$\text{Neighborhood Group Percentage} = \frac{(\text{total 1997 NBHD REAP Value} - \text{Total 1996 NBHD Tax Year Value})}{\text{Total 1996 NBHD Tax Year Value}}$$

(a) *Individual neighborhood group percentages will be determined for residential land, commercial land, residential improvements, and commercial improvements.*

(10) *“New construction” means the construction, addition, or substitution of improvements, buildings, living areas, garages and outbuildings; or the extensive remodeling on existing improvements, buildings, living areas, garages, and outbuildings.*

(11) *“Phase-in percentage” is 2% per year...*

(12) *“Reappraisal (REAP) value” means the full 1997 value determined for the current reappraisal cycle pursuant to 15-7-111, MCA, adjusted annually for new construction or destruction. The 1997 reappraisal value reflects a market value of the property on January 1, 1996. A current year REAP value is the same as the 1997 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassification, land productivity changes, improvement grade changes or other changes made to the property during 1997 or subsequent tax years.*

(13) *“Value before reappraisal (VBR)” means the 1996 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the 1997 tax year and subsequent years is the same as the 1996 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassification, land productivity changes, improvement grade changes or other changes made to the property during 1996 or subsequent tax years.*

ARM 42.20.502 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR), EXCLUDING INDUSTRIAL PROPERTIES (1) *For property that contains no new construction, destruction, land splits, land use changes, land reclassification, land productivity changes, improvement grade changes or other changes made to the property during 1996 or subsequent tax years, the current year VBR will be the same as the prior year VBR.*

(4) *for class 4 property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by 1 plus the percent of neighborhood change. The following formula illustrates that calculation:*

$$\text{VBR} = \frac{\text{Reappraisal value}}{(1 + \text{NBHD group percentage})}$$

(5) for class 4 property (excluding industrial property) that has been either partially or wholly destroyed, the current year VBR is calculated by first determining what percent of the property was destroyed. That percent is multiplied by the difference between the prior year VBR and the value attributed to the destruction. The following formula illustrates that calculation:

$$\text{VBR} =$$

(percent of property destroyed X prior year improvement VBR

(8)(a) The only instances when the current year VBR will be less than the prior year VBR are:

- (i) In the case of class 4 improvements that have been partially or wholly destroyed;
 - (ii) When the neighborhood group percentage change is negative and there is new construction; or
 - (iii) When land use changes have occurred.
- (b) In all other situations, the current year VBR will be the greater of the value determined through application of the formula in (4) or the prior year VBR.

ARM 42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS 3, CLASS 4, AND CLASS 10 PROPERTY. (1) The department is required to determine the current year phase-in value for each property in class 3, class 4, and class 10 annually. The current year phase-in value is determined by adding the difference between the reappraisal (REAP) value and the VBR times the phase-in percentage to the VBR.

Current Year Phase-in Value =
[(Reappraisal (REAP) Value – VBR) x Phase-In Percentage] + VBR

ARM 42.20.504 NEW CONSTRUCTION DETERMINATION (1) The following criteria will be used to identify new construction and destruction:

- (a) All residential or commercial structures, outbuildings, and mobile homes that were built, remodeled, or destroyed in the preceding year;
 - (b) Properties with new attached garages built in the preceding year;
 - (c) Properties which had any land reclassification or land use changes; or
 - (d) Properties with outbuildings built in the preceding year.
- (2) The following will not be considered new construction or destruction.
- (a) Properties with square footage changes due to correction of measurements or sketch vectoring, or due to coding corrections for story heights, such as story with full finished attic to 1 ½ stories;
 - (b) Properties with improvement grade changes;
 - (c) Properties with condition, desirability, utility (CDU) factor changes;
 - (d) Properties with changes in heat or air conditioning;
 - (e) Residential dwelling with changes in square footage of living area of 100 square feet

- or less;*
- (f) Properties with changes in effective year; or*
- (g) Properties with changes in finished basement area.*

The taxpayers used the basic floor plan of the original house when they rebuilt the home. The new home is a near duplicate of the original with the only difference being some additional square footage. When determining the phase-in value for new construction the DOR must determine the "value before reappraisal" (VBR). This was done by taking the 1997 market value of the improvements of \$160,080 and dividing by the DOR established neighborhood percentage of 1.264 to arrive at a 1996 VBR of \$126,646.

The DOR contends that, based on Montana statute and administrative rule, they are prohibited from phasing-in the values of the subject property in a manner that the taxpayer and the county board suggests.

TAXPAYERS' CONTENTIONS

The home was rebuilt in 1997, recognizing the original structure's floor plan. In preparation for and during this hearing, the taxpayers discovered discrepancies in the physical characteristics from what the DOR has determined, and what actually exists. By way of a post-hearing submission, the taxpayers submitted a photo-copied portion of the building plans (roof framing plan). The variations between the taxpayers' evidence and the DOR's property record card are addressed below in the Board's discussion.

Mr. Wolf testified that his argument is not with the 1999 appraised value of the property, but with the fact that this property has been appraised as new construction, and the value has not been phased-in recognizing the market value of the original residence.

Mr. Wolf testified that he requested that the DOR not remove the structure from the tax rolls after the fire because the residence would be rebuilt.

BOARD'S DISCUSSION

Although not originally the issue on appeal before this Board, the DOR's determination of the physical characteristics of the residence are in question. The taxpayers presented sufficient evidence to illustrate that the DOR's measurements are incorrect. The DOR's exhibits would suggest that the residence was increased in total living area by 1,297 square feet from the original structure. The taxpayers testified that there were minor variations from the original floor-plan.

The DOR's post-hearing submission illustrates that the DOR valued the subject improvements from the cost approach to value. The Board does not dispute that this is the proper appraisal method since the Computer Assisted Mass Appraisal System (CAMAS) was unable to identify sufficient comparable sales to establish a market value indication from the sales comparison approach. This is illustrated on page three of the DOR's post-hearing submission

dated January 20, 2000. The "NC" indication suggests the properties selected by the CAMAS are non-comparable.

Based on the number of inconsistencies between the DOR's information and what the taxpayer has presented with respect to the physical characteristics, the Board will not establish what is the correct data, but rather will order the DOR to revisit the subject property and correct the property record card. In addition, the DOR has established the residence has 1,225 square feet of half story area and 308 square feet of attic. Based on the Montana Appraisal Manual, page A33.1, Story Height Illustrations, the area should be identified and appraised as attic. The amount of finished and unfinished area will affect the overall market value, and the DOR can determine this at the time the on-site review is conducted.

The residence was built new, with new materials. It is not the same structure, even though it essentially mirrors the original residence. It is an unfortunate circumstance that the fire occurred, but Montana law and administrative rule do not provide this Board the ability to phase-in the value of the subject property in a manner that the taxpayers would suggest. The Board agrees with the DOR that the administrative rules, 42.20.501-504 are straightforward with respect to new construction and the phasing-in of real property. *MCA, 15-2-301 (4) ...The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious or otherwise*

unlawful.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.
§15-2-301 MCA.
2. **§15-8-111, MCA. Assessment - market value standard - exceptions.**
(1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. **§15-2-301, MCA, Appeal of county tax appeal board decisions. (4)**
In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. **§15-2-301, MCA, Appeal of county tax appeal board decisions. (4)**
...The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious or otherwise unlawful.
5. The DOR will conduct an on-site review of the property and revise the property record card to reflect the actual physical characteristics of the subject residence.
6. The DOR's appeal of the determination of the property being "new construction" is hereby granted.
7. The DOR's appeal of the method of phasing-in the value of the subject property is hereby granted.

8. The decision of the Mineral County Tax Appeal Board is hereby
reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the DOR appraiser will conduct an on-site review of the subject property, make the necessary corrections to the property record card and CAMA system, and the revised market value of the property shall be entered on the tax rolls of Mineral County by the Assessor of that county. The market value is to be established by means of the cost approach to value.

The appeal of the DOR with respect to the application of "new construction" and phase-in" is hereby granted and the decision of the Mineral County Tax Appeal Board is reversed.

Dated this 29th day of February, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of February, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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Saltese, Montana 59867-0132

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DONNA EUBANK
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